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Charles Hsin and Optech Limited

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

Civil No. 07-4762-PJH

v.

CHARLES CATHCART, SCOTT
CATHCART, YURIJ DEBEVC, a/k/a YURI
DEBEVC, ROBERT NAGY, DERIVUM
CAPITAL (USA), INC., VERIDIA
SOLUTIONS, OPTECH LIMITED,
CHIHSIU HSIN, a/k/a CHARLES HSIN,
FRANKLIN THOMASON

Defendants.

**DEFENDANTS HSIN AND OPTECH
LIMITED'S ADMINISTRATIVE
MOTION PURSUANT TO LOCAL RULE
7-11 TO CONTINUE THE ENTIRE CASE
MANAGEMENT SCHEDULE ORDER**

Pursuant to Local Rule 7-11 and the Federal Rules of Civil Procedure ("FRCP")
Defendants CHARLES HSIN and OPTECH LIMITED (collectively "Defendants"), a Hong
Kong Company, move this Court for an order extending all of the court deadlines in its
scheduling order and the trial date of March 23, 2009.

As grounds the defendants assert:

1. Defendants were served on or about May 13, 2008.
2. Defendants sought time to answer or otherwise plead. The Court granted these
extensions.

1 3. On July 15, 2008, Defendants filed motions pursuant to Federal Rules of Civil
2 Procedure (“FRCP”) 9(b), motion to dismiss for failure to plead fraud with particularity, and
3 FRCP 12(e), motion for a more definite statement. These motions will be heard on September
4 10, 2008.

5 4. Defendants plan to file some meritorious, dispositive motions soon, which will
6 raise new issues. Defendants have been delayed, in part, due to an inability to obtain
7 declarations from certain persons.

8 5. These current deadlines are:

- 9 a. The last day to amend pleadings was June 5, 2008.
10 b. The cut-off date for the designation of experts was August 20, 2008.
11 c. The cut-off date for non-expert discovery is September 3, 2008.
12 d. The cut-off date for expert discovery is October 1, 2008.
13 e. Dispositive motions must be heard by November 19, 2008.
14 f. Trial is set for March 23, 2009.

15 6. Defendants, who are still in the pre-answer stage, are severely prejudiced
16 because they have not been able to perform discovery or have time to select experts after
17 discovery is completed. Defendants will continue to incur prejudice under the existing
18 Scheduling Order.

19 7. Defendants are planning to conduct discovery into the United States
20 investigative files and to depose certain currently as of yet unidentified IRS officials. However,
21 with the current discovery cut-off date, such fundamental discovery will not be possible.

22 8. Based on discovery, a motion to suppress evidence may have to be filed.

23 9. Based on the above deadlines, Defendants are precluded from amending
24 pleadings, obtaining fact discovery from the United States, and selecting and using any experts

1 at all because the United States waited until near the end of the proceeding to join Defendants
2 in conjunction with the enforcement of the existing Scheduling Order.

3 10. The United States is still seeking to join Franklin Thomason whom the United
4 States alleges to be a principal and director of defendant Optech Limited. The United States
5 has just sought an order to serve Thomason by publication for personal jurisdiction purposes.
6 The Court just granted the United States' motion to serve Thomason by publication in a
7 newspaper based in or around Casa Grande, Arizona by October 20, 2008. Once that is done
8 and if the Thomason then appears, by the time he moves or answers it will be close to the
9 current trial date.
10

11 11. With respect to Thomason, all of the existing deadlines will have run.

12 12. Defendants are and will be severely prejudiced by the current deadlines and the
13 current trial date.

14 13. Defendants have a due process right under the Federal Rules of Civil Procedure
15 ("FRCP") to be able to exercise all of their rights, including motion filings, discovery, selection
16 of and discovery of other experts, and the United States must be required to follow all of the
17 rules to obtain an injunction. Both exercises must be coexistent. No prejudice is required to be
18 shown under the exercise of these rights because the FRCP is the implementation of the Due
19 Process Clause in proceedings in the Federal Courts.
20

21 14. The United States should be allowed to be heard or object to the requested
22 continuances and the Court should not act to create a result where the United States being able
23 to take advantage of this late decision by the enforcement of the current Scheduling Order.
24

25 15. Discovery may have been taken before Defendants even appeared in this civil
26 action.

27 16. No discovery has been received from the United States other than the initial
28

1 disclosure and, today, a small part of the extensive discovery already produced to the other
2 defendants – two of apparently eight digital discs containing documents. Indeed, Defendants
3 understand from other parties in this case, that the eight discs contain 363,159 separate files.
4 Some of these file are multiple-page files, including one file consisting of 692 pages.
5 Defendants have not yet have an opportunity to analyze these documents, and again, to date,
6 have only received two of the eight discs

7 17. The current imposition of the deadline precludes Defendants from exercising
8 their rights under the FRCP.
9

10 18. Defendants request the same amount of time that the United States and the other
11 defendants have been given to date conduct discovery and prepare for trial. The new proposed
12 dates are set out in a proposed scheduling order.

13 19. Tax cases involving the 90% Stock Loan brought by taxpayers winding through
14 the Federal Courts. The Court will have the benefit of these decisions. The Superior Court of
15 California has previously granted summary judgment that the marketing of the loan
16 transactions, including the 90% Stock Loan in issue in this civil action, were not the sale of
17 securities but were bona fide loans.
18

19 20. The Court has control over all but one of the defendants via personal jurisdiction
20 so the Court can continue any objected conducted on an interim basis.

21 21. It is Defendants' understanding that the United States is willing to stipulate to a
22 short extension of two to three months. However, this short extension is insufficient for
23 Defendants to conduct discovery, analyze the discovery, research and seek motions, prepare for
24 trial, etc.
25

26 22. Defendants have been advised that the Court is fully booked, even double and
27 triple booked, through 2009. Consequently, this creates a compelling basis to grant the changes
28

1 requested by the Defendants.

2 22. Accordingly, Defendants request that the deadlines in this matter be continued at
3 least seven (7) months and five (5) days, which represents the extra time that the other
4 defendants have had to prepare. Specifically, Defendants request that the Court set the
5 following deadlines, or set dates beyond those suggested which are convenient with this
6 Court's schedule:

- 7
- 8 1. The last day to amend pleadings would be May 10, 2009.
 - 9 2. The cut-off date for the designation of experts would be July 25, 2009.
 - 10 3. The cut-off date for non-expert discovery would be August 8, 2009.
 - 11 4. The cut-off date for expert discovery would be September 6, 2009.
 - 12 5. Dispositive motions would be heard by October 24, 2009.
 - 13 6. Trial would set for February 28, 2010.
- 14

15 Due to the Court's double and triple booking for trials for 2009, an early setting in 2010
16 will be more appropriate and potentially more convenient for the Court.

17 23. As support for this motion, Defendants are also filing a Memorandum of Points
18 and Authorities and the Declaration of Edward O.C. Ord for the Court's consideration.

19 WHEREFORE, Defendants request the Court to grant this motion and sign the
20 proposed order.

21 Dated: August 25, 2008

Respectfully Submitted,

23 ORD & NORMAN

24 By /s/ Edward O.C. Ord

25 Edward O.C. Ord, Esq.

26 Attorney for Defendant Charles Hsin and Optech
Limited

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CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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I further certify that on August 13, 2008, service of the foregoing was made upon the following by depositing a copy in the United States mail, postage prepaid:

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/s/ Edward O.C. Ord
EDWARD O.C. ORD